

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARTHUR MARTIN GONZALES,

Plaintiff,

v.

CIV No. 21-0111 KBM

ANDREW SAUL,
Commissioner of Social Security Administration,

Defendant.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court on Plaintiff's Motion to Proceed in Forma Pauperis with Financial Affidavit Pursuant to 28 U.S.C. 1915 (Doc. 2), filed February 11, 2021.

The Court may authorize the commencement of any suit without prepayment of fees by a person if he: (1) submits an affidavit that includes a statement of all assets he possesses and (2) is unable to pay such fees. 28 U.S.C. § 1915(a). In determining whether a movant is unable to pay within the meaning of Section 1915, the Tenth Circuit has indicated that “[o]ne need not be absolutely destitute to proceed IFP.” *Lewis v. Ctr. Mkt.*, 378 F. App’x 780, 785 (10th Cir. 2010) (unpublished). Nevertheless, a motion to proceed IFP may properly be denied if the movant *can* pay the required fees and still support and provide necessities for himself and any dependents. *Id.*

In his affidavit, Plaintiff states that: (i) his monthly income is \$5,300; and (ii) his monthly household expenses are approximately \$3,775. See Doc. 2. Thus, it appears that Plaintiff may be able to pay the \$400.00 filing fee for instituting a new case, because

his monthly income and cash exceed his monthly expenses. See *Brewer v. City of Overland Park Police Dep't*, 24 F. App'x 977, 979 (10th Cir. 2002) (litigant whose monthly income exceeded his monthly expenses by a few hundred dollars appeared to have sufficient income to pay filing fees and thus was not entitled to IFP status) (unpublished).

The undersigned, as a United States Magistrate Judge, lacks the authority to deny a Motion for IFP. As such, this matter must be transferred to a District Judge if such a denial is required.

IT IS THEREFORE ORDERED that Plaintiff must either pay the applicable filing fee or show cause in a written document to be filed with the Court no later than **Friday, February 26, 2021**, why this case should not be transferred to a District Judge for his or her consideration of Plaintiff's Motion for IFP. If Plaintiff fails to file any response or pay the filing fee, the matter will be reassigned to a District Judge.



HONORABLE KAREN B. MOLZEN
UNITED STATES MAGISTRATE JUDGE